Office of the
Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

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May 31, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98, Part 2 - Reply Comments

Dear Secretary:

Enclosed please find the original and sixteen (16) copies of the Office of the Ohio Consumers' Counsel's Reply Comments to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Sincerely,

David C. Bergmann
Assistant Consumers' Counsel

DCB/pjm

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

SUMMARY OF
REPLY COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
(Part 2)

The Office of the Ohio Consumers' Counsel (OCC) replies to the initial comments of certain other parties on the subjects of dialing parity, public notice of technical changes, and access to rights of way These issues are crucial to the development of effective local exchange competition.

On the subject of dialing parity, OCC supports the use of a full 2-PIC presubscription mechanism for intraLATA toll calling. OCC agrees with the Staff of the Public Utilities Commission of Ohio (PUCO) that there should be a "90-day 'one free switch' window" for intraLATA calling.

OCC disputes Ameritech's position that incumbent local exchange carriers are not required to give new entrants the same quality of access that the ILECs give themselves. Such differential service would be anti-competitive. However, OCC agrees with Ameritech that recovery of dialing parity costs is a matter for the states to decide. OCC

notes that the system-wide benefit of dialing parity justifies broad responsibility for recovery of these costs.

OCC supports the PUCO Staff's position on when notice of technical changes should be provided. This position strikes a balance between the excessive disclosure proposed by Time Warner and the inadequate disclosure proposed by Ameritech.

On rights of way, OCC supports those who argue that there should be a presumption that capacity exists for competitors to use, and that the burden of proof should be on the party refusing access to prove lack of capacity. Finally, OCC disagrees with AT&T that LECs are required to upgrade their conduit, or to expand capacity, in order to meet the needs of potential users of the conduit.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL (Part 2)

The Office of the Ohio Consumers' Counsel (OCC) herein replies to the comments of certain other parties on the topics of dialing parity, number administration, notice of technical changes, and access to rights of way.[1] These were the four topics set out in the Commission's April 19, 1996 Notice of Proposed Rulemaking for a separate comment cycle.

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[1] OCC replies herein to the comments filed by: Ameritech; Association for Local Telecommunications Services (ALTS); AT&T Corp. (AT&T); Cincinnati Bell Telephone Company (CBT); GTE Service Corporation (GTE); MCI Telecommunications Corporation (MCI); Ohio Edison Company (Ohio Edison); Public Utilities Commission of Ohio Staff (PUCO Staff); Sprint Corporation (Sprint); Time Warner Communications Holdings, Inc. (Time Warner); and United States Telephone Association (USTA).

NPRM Sec. II.C.3. Dialing Parity (Paragraphs 202-219)

¶ 209-210 In the absence of smart- or multi-PIC availability, OCC agrees with PUCO Staff that "[full] 2-PIC" is preferable. PUCO Staff at 7; *see also* AT&T at 5. Full 2-PIC is clearly superior to the modified 2-PIC that has been implemented in Ohio. NPRM at n.286. USTA argues (at 2) that "the Commission should not preempt states from adopting a particular [presubscription] method...." OCC submits that, under the Act, anything short of full 2-PIC unacceptably limits consumers' choices. Sprint proposes (at 5) that the "modified 2-PIC" presubscription pattern be used, but does not explain why, especially how it may be superior to or cheaper to implement than full 2-PIC. There is no reason for the Commission to allow anything less than full 2-PIC.

OCC agrees with PUCO Staff (at 7) that there should be a "90-day 'one free switch' window" for intraLATA calling. After the 90 days, a reasonable charge of no more than $5 per change of carrier should be permitted. *Id.* In many instances the IXC gaining the customer's account will pay the switching charge, but keeping a low switching charge will facilitate intraLATA competition.[2]

¶ 211 OCC is pleased that Ameritech has voluntarily exceeded the requirements of Sec. 251(b)(3), by implementing "same-number-of-digits" dialing rather than the "no access code" dialing required by the Act. Ameritech at 4. However, we do not believe that consumers would see any real functional difference between having to dial extra digits and

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[2] On the local service side, OCC supports a similar cap on the cost of initiating local service with a new carrier. Further, the customer's old carrier should not be able to impose an "exit fee" upon the customer who switches.

having to dial an access code As even USTA submits (at 2), "Customers should be able to reach their chosen toll carrier without dialing access codes or extra digits regardless of whether the long-distance carrier is also the local provider, or is affiliated with the local provider." *See also* GTE at 8.

Ameritech asks the Commission "to confirm" that both new local exchange carriers (NECs) and incumbent local exchange carriers (ILECs) have dialing parity duties. Ameritech at 5. No such confirmation is required: Sec. 251(b), by its very terms, describes duties of *all* local exchange carriers.

¶ 213 CBT argues that ILECs should not be required to do any customer education on intraLATA and local choices once they become available. CBT at 5. However, as even USTA states (at 4), "In areas which are just converting to intraLATA presubscription, some consumer education would be appropriate." OCC submits that, at minimum, the Commission should require an ILEC to inform its customers that there are alternatives to its basic and non-basic local services, as well as to intraLATA toll arrangements. Such a one-time requirement is a minimal step to address the ILECs' current market dominance.

¶ 214 Ameritech (at 12) argues that it is not required to provide other carriers the same quality of access that it provides to itself. *See also* USTA at 7. In other words, Ameritech is claiming that giving all other carriers an equal level of *degraded* access, *i.e.*, inferior to that provided to itself, is "non-discriminatory." Surely Congress contemplated nothing of the sort, as is recognized even by other ILECs. In another context (that of dialing delay), USTA states (at 8) that "if a LEC offers comparable access (comparable to the access it provides to itself) to all competitors, there should be no question as to whether any delay

is unreasonable." Similarly, GTE "substantially agrees" with the Commission's definition of nondiscriminatory access, requiring ILECs to provide access equivalent to that they grant themselves. GTE at 13-14.

¶ 218 We agree with Sprint's proposal (at 10-12) on determining and measuring dialing delay.

¶ 219 We agree with Ameritech (at 10) that recovery of dialing parity costs is a state matter. *See also* GTE at 20. Thus MCI's proposal (at 7) that the Commission establish a "presumptively correct" set of cost recovery principles goes beyond the Commission's authority. We note that Ameritech's subsequent suggestion (at 10) that dialing parity costs "should be recovered under normal regulatory principles from the cost-causer" ignores the fact that the benefits of dialing parity are network-wide. Thus even if a "cost-causer" for dialing parity may be found, normal regulatory principles would allow a broad distribution of cost recovery responsibility. *See* PUCO Staff at 11.[3]

NPRM Sec. II.E. Number Administration (Paragraphs 250-259)

OCC has no reply to any party's comments in this area.

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[3] We agree with AT&T (at 7) regarding costs that should not be passed through as costs of implementing dialing parity.

NPRM Sec. II.B.4. Duty to Provide Public Notice of Technical Changes (Paragraphs 189-194)

¶ 189 OCC agrees with PUCO Staff (at 2) that it would be appropriate for the Commission to include the concepts of seamlessness and transparency to end users in its definition of "interoperability." *See also* Sprint at 1-2.

PUCO Staff submits (at 2) that ILECs should be required to provide notice whenever they intend to implement any changes that would alter their existing interconnection arrangement in any way. This is consistent with the statute's use of "necessary"; it should not be within a LEC's purview to determine which notices are necessary and which could not affect others' networks. Ameritech argues (at 25-26) that "excessive exchange of information between competitors is inconsistent with the operation of a competitive marketplace...." In this instance, such sharing is necessary to ensure the seamless operation of the network. On the other hand, Time Warner argues (at 3) that "any and all ... information which would affect the interconnection or interoperability of ... networks" must be made available. PUCO Staff is much closer to the letter and spirit of the law than either Ameritech or Time Warner.[4]

Time Warner has hit the mark in its position that notice needs to be given "at the earliest point in time" for effective competition. Time Warner at 7. Further, as Time Warner notes, there should be no advance notice to any party prior to the issuance of the

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[4] PUCO Staff recommends (at 4) a broad range of parties who should receive notice of any changes. In lieu of notice to all interested parties, it might be worthwhile to provide for on-line notice. PUCO Staff's recommendation subsumes AT&T's proposal (at 24; *see also* MCI at 17) for notice to the Commission.

public notice. *Id.* at 8. Time Warner also persuasively argues for a standardized form for the notice. *Id.* at 10.

¶ 191 Although OCC agrees with Ameritech (at 31) that the notification requirement of Sec. 251(c)(5) should apply to all carriers, ILECs and NECs alike, the Act only addresses ILECs. *See also* GTE at 5. However, states may (and should) impose such a notification requirement on NECs. This should include the "earliest notice," "no advance notice," and "standardized notice form" recommendations of Time Warner just discussed.

NPRM Sec. II.C.4. Access to Rights of Way (Paragraphs 220-225)

A number of parties agree with OCC that there should be a presumption that there is space within a conduit or on a pole for competitors' facilities. *See, e.g.,* Ameritech at 36. Further, parties agree that the denier of access has the burden of proof to show a lack of space. *See, e.g.,* AT&T at 18; Sprint at 16. With regard to space needed for the utility's own use, we agree with AT&T (at 16) that projections of future use should extend out only one year, because "[u]tilities should not be permitted to hoard capacity...." We agree with Ohio Edison (at 18) that in order to prevent *competitors* from hoarding capacity, where leases cause the utility to deny another competitor's attachment request for lack of capacity, those leasing space should be required to actually attach within six months. We also agree with PUCO Staff (at 12) that access should be on a first-come, first-served basis. *See also* Time Warner at 13.[5] In contrast to all this, GTE (at 22) argues that the

[5] Time Warner's point (*id.*) is well taken that a subsequent grant of access after denial of access because of lack of capacity should be subject to sanction.

Commission need not adopt rules in this area. In this area, minimum Commission-imposed requirements are not inappropriate.

¶ 222 Here again, Ameritech argues (at 34) that it is only required to provide non-discriminatory access to rights of way, conduit and poles, and that "non-discriminatory" does not mean equal to the access Ameritech provides itself. We again note that allowing competitors only a degraded form of access would be exceedingly anti-competitive and contrary to the broad purposes of the Act.

¶ 223 AT&T argues (at 16) that the Act does not allow a LEC to claim lack of capacity as an excuse for denying access. Surely Congress could not have intended to remove any technical and logistical feasibility criteria from this aspect of telecommunications. We do agree, however, with AT&T (at 17) that the odds are against a valid claim of lack of capacity.

AT&T implies that the Act provides a "fix" for inefficient use of conduit. *Id.* This fix would require LECs to remove their inefficient wiring, and replace it with an optimum system, in order to allow AT&T and others to use the conduit. OCC submits that this goes well beyond Congress' intention. AT&T also implies that there will be "situations where LECs must expand capacity in order to accommodate competing LECs." *Id.* at 18. Nothing in the Act requires such action from an ILEC.

CBT argues, on the one hand, argues for the use of replacement costs for pricing conduit space, but on the other hand argues for the use of forward looking costs of usable and unusable space for pricing pole attachments. CBT at 8-9. These alternatives are

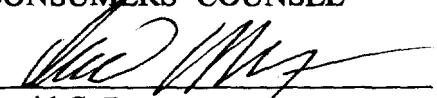
logically inconsistent. CBT is clearly seeking only the maximum financial advantage for itself.

CONCLUSION

OCC urges the Commission to consider and adopt the proposals contained herein and in OCC's Initial Comments as conclusions on these crucial matters are reached.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that the Reply Comments of the Office of the Ohio Consumers' Counsel (Part 2) have been served by overnight mail to the International Transcription Service, with three copies to Gloria Shambley, and in diskette form to Janice Myles on this 31st day of May, 1996.

David C. Bergmann
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